F. M. S. R.

[APPELLATE CIVIL JURISDICTION]

MUDIE, J.

July 12, 1934.

KUTAI BIN HAJI LATEH
DATO BAGINDARAJAH REDEK BIN KENEH
LANJONG BIN KENEH } Appellants

vs.

TAENSAH BINTI HAJI ENOH.....Respondent

[NEGRI SEMBILAN CIVIL APPEAL No. 11 of 1934]

(Appeal from decision of Collector of Land Revenue).

The Probate and Administration Enactment, 1920, section 184—Hukum Shara—*Meaning of "Suit"—Limitation Enactment, 1896, section 3.*

Proceedings before a Collector under section 184 of The Probate and Administration Enactment, 1920, come within the definition of "Suit" in section 3 of the Limitation Enactment, 1896.

Appellants in person.

Respondent in person.

Cur. Ad. Vult.

MUDIE, J.—This is an appeal from the order of the Collector of Land Revenue made under section 184 of the Probate and Administration Enactment, 1920, as amended by section 2 of the Probate and Administration (Amendment) Enactment, 1926, for the distribution of the Estate of Enoh bin Khamis deceased.

It appears that Haji Enoh died sometime in 1933 in Ulu Pilah, possessed of one third interest in E.M.R. 1499 and one fifth interest in E.M.R. 3078. He left a daughter, Taensah, the respondent, and a number of cousins, sons of his father's brothers.

The respondent claims these lands on the ground that she had advanced a sum of $400/- to her father ten years before his death, and that it was understood that she would take this property when he died in discharge of the debt.

The Collector admitted her claim and made an order transferring to her the deceased's interest in the said lands.

Three of the deceased's cousins prefer this appeal against the order of the Collector on the ground that the claim was admitted on insufficient evidence. There is no documentary evidence to support the claim, which rests entirely on the evidence of the respondent and her relatives, all of whom are interested parties. They ask that the order of the Collector be set aside and that the property be distributed according to the *Hukum Shara*, under which they are entitled to a share.

The defence of limitation appears never to have been set up. From the definition of "Suit" in section 3 of the Limitation Enactment, 1896, there can be doubt that it extends to proceedings before the Collector under section 184 of the Probate and Administration Enactment, 1920. If that defence had been made, the respondent's claim would have been dismissed.

The appellants were not represented by counsel, and could not have been without the permission of the Collector under section 191. In these circumstances it was the duty of the Collector to inform the appellants, who were opposing the respondent's claim, that this defence was available to them.

I allowed the point to be taken on appeal, and held that the claim was statute-barred.

In his grounds of judgment the Collector says that, apart altogether from the question of debt, Taensah, the claimant, would inherit these lands under the *Adat Perpateh*, as these lands were opened up by her parents from their joint earnings, and according to the *Adat Perpateh* all such property passes to the children.

This is not Customary Land. It has not been endorsed under section 4 of the Customary Tenure Enactment, 1926, or under section 2 of the Customary Tenure Enactment, 1909. Whether non-customary land acquired by parents from their joint earnings would descend according to the *Adat* or the *Hukum Shara* was never definitely settled until the passing of the Customary Tenure (Amendment) Enactment, 1930, which amends the principal Enactment by the addition of a new section 25, which provides:

> "Nothing in this Enactment contained shall affect the distribution of the estate, not being customary estate, of any deceased person."

It is clear, therefore, that this land is governed by the *Hukum Shara*.

The appeal will be allowed. The order of the Collector will be set aside. There will be an order that the claim in respect of the debt of $400/- be rejected, and the land distributed according to the *Hukum Shara*.

There will be no order as to costs.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

THOMAS, C.J. (F.M.S.)

July 16, 1934.

ING CHIAT..... Appellant

vs.

A. B. NICHOLAS..... Respondent

[SELANGOR MAGISTRATES' CIVIL APPEAL No. 17 of 1934]

The Civil Procedure Code, 1918, sections 280 and 504—Malicious attachment before judgment —Withdrawal of application for damages under section 504—Suit for damages—Necessity of proving favourable termination of proceedings.